88-946

NO. 88-_____

Supreme Court, U.S.
FILED
OCT 19 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1988

MACK APLIN,

PETITIONER,

VERSUS

THE STATE OF ALABAMA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

FRED M. TATUM & ASSOCIATES,
LAWYERS, (P.C.)

BY: FRED M. TATUM, JR.
119-121 North Oates Street
Dothan, Alabama 36303
Telephone: (205) 793-7335
ATTORNEY FOR PETITIONER,
MACK APLIN

QUESTION PRESENTED

1. Does the prior conviction introducted into evidence by the State to enhance punishment in a second offense D.U.I. comply with the legal requirements of Burgett v. Texas, 398 U.S. 109, 19 L.Ed.2d 319, 88 S. Ct. 258 (1967); Carnley v. Cochran, 369 U.S. 506, 8 L.Ed.2d 70, 82 S. Ct. 884; Boykin v. Alabama, 395 U.S. 238 (1969); Baldasar v. Illinois, 446 U.S. 222 (1980); Ireland v. State, 257 So.2d 602, 47 Al. App. 65 (1971); Jarman v. State, 310 So.2d 481, 53 Al. App. 557 (1975), as no records of proceedings are kept by the District Courts of the State of Alabama, except as hereafter noted?

2. Does the Code of Alabama, 1975, Title 12-12-2(a)(b) (c), violate the Constitution of the United States in that said Code states, to-wit:

TITLE 12-12-2:

"(a) The District Court shall be a court of record.

(b) Records of proceedings shall be made, maintained and preserved according to rules promulgated by the Supreme Court, but neither reports nor transcripts of proceedings shall be required, except as provided by law or rule.

(c) Any party may employ a reporter or provide for a transcript of the proceedings on his own account. (Acts 1975, No. 1205, p. 2384, Subsection 4-110.)"

by denying petitioner equal protection of the law by said Section (c) requiring petitioner to employ a reporter at his own expense, indigent, or non-indigent, as the District Courts of the State of Alabama, although Courts of Record, keep no transcripts of their records, other than pre-printed forms of judgments, the State's complaint, and a defendant's pleadings, in criminal cases before said Courts?

3. Does the State of Alabama, by and through its Code of Alabama, 1975, Title 12-12-2(c) deny this petitioner, as well as all others within the criminal jurisdiction of the District Court of Houston County, and all other District Courts of the State of Alabama, Equal Protection of Law and Due Process of Law under the Constitution of the United States, 1787, Amendment Fourteen, by requiring this defendant in a criminal cause, to provide his own court reporter, if he wishes a transcript of the proceedings of the trial made, which would determine if the Court held a viva voce "Boykin Colloquy", and a full showing of whether there was valid waiver of counsel, as required by the main cases of Burgett v. Texas, 398 U.S. 109, 19 L.Ed.2d 319, 88 S. Ct. 258 (1967), Carnley v. Cochran, 369 U.S. 506, 8 L.Ed.2d 70, 82 S. Ct. 884; and Boykin v. Alabama, 395 U.S. 238 (1969), thereby depriving this

defendant, and all other criminal defendants, the right to have a written colloquy to show that the requirements of Boykin v. Alabama, supra, and a knowing, intentional and intelligent waiver of counsel, per Burgett v. Texas, and Carnley v. Cochran, supra, have been met by said District Courts for the State of Alabama, as their judgments only recite conclusions of law, as shown by a true and correct copy of each judgment against petitioner, which is attached hereto and made a part hereof, the same as if set out in full herein, and marked Exhibits "D", "E" and "F" in the Appendix hereto?

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This Court should grant Certiorari to consider whether the judgments of the District Courts of Alabama, Criminal Divisions, deny this petitioner, and all other criminal defendants Equal Protection of Law and Due Process of Law under the cases of Burgett v. Texas, Carnley v. Cochran, and Boykin v. Alabama, by the failure of their judgments to include a viva voce colloquy required by Boykin v. Alabama, 395 U.S. 238 (1969), Carnley v. Cochran, 369 U.S. 506, 8 L.Ed.2d 70, 82 S. Ct. 884, and Burgett v. Texas, 398 U.S. 109, 19 L.Ed.2d 319, 88 S. Ct. 258 (1967). They only contain conclusions of facts pertaining to whether or not a defendant has

knowingly, intelligently and understanding waived counsel and conclusions of facts that a "Boykin Colloquy" was carried out prior to the entering of a guilty plea, and which may be used to impose enhanced punishment for subsequent offenses, without any emanuensis, other than the trial judge. The District Courts of Alabama, although Courts of Record, have no records other than the State's complaint, the defendant's pleadings and the pre-printed forms of judgment.

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Lopez v. State, 429 So.2d 1135 (Al. Crim. App. 1982)

Rice v. Olson, 324 U.S. 786, 789-791, 89 L.Ed. 1367, 1369-1371, 65 S. Ct. 989

Twyman v. State,
293 Al. 75 (1974)

STATUTES

Code of Alabama, 1975,
Title 12-12-2(a)(b)(c)

Code of Alabama, 1975,
Title 12-12-72(1)(2)

NO. 88- _____

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1988

MACK APLIN,

PETITIONER

VERSUS

THE STATE OF ALABAMA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

Petitioner, Mack Aplin, respectfully prays that a Writ of Certiorari issue to review the judgments of the Supreme Court of Alabama, and the Court of Criminal Appeals of the State of Alabama in this case.

CITATION TO OPINION BELOW

There is no opinion from the Court of Criminal Appeals of Alabama.

There is no opinion from the Court of Criminal Appeals of Alabama overruling the Application for Rehearing.

There is no opinion to the Certificate of Judgment and Denial of Writ of Certiorari by the Supreme Court of Alabama.

Copies of each are attached hereto, as Exhibit "A", Exhibit "B" and Exhibit "C", and made a part hereof, the same as if set out in full herein, and are found in the Appendix hereto.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3), petitioner having asserted below and asserting here a deprivation of rights secured by the Constitution of the United States. The

decision of the Court of Criminal Appeals of Alabama was rendered on May 11, 1988. Rehearing was denied on May 24, 1988. The Petition for Writ of Certiorari and Writ of Judgment denying Petition was filed in the office of the Clerk of the Supreme Court on, to-wit: August 19, 1988.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fourteenth Amendment to the Constitution of the United States:

> ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. This case also involves the following provisions of the Code of Alabama, 1975:

CODE OF ALABAMA, 1975, TITLE 12-12-2, DISTRICT COURT A COURT OF RECORD; PREPARATION, MAINTENANCE, ETC., OF RECORDS OF PROCEEDINGS GENERALLY; EMPLOYMENT OF REPORTERS, OR PROVISION FOR TRANSCRIPTS OF PROCEEDINGS BY PARTIES:

(a) The District Court shall be a court of record.

(b) Records of proceedings shall be made, maintained and preserved according to rules promulgated by the Supreme Court, but neither reports, nor transcripts of proceedings shall be required, except as provided by law or rule.

(c) Any party may employ a reporter, or provide for a transcript of the proceedings on his own account. (Acts 1975, No. 1205, p. 2384, Section 4-110)

CODE OF ALABAMA, 1975, TITLE 12-12-72, WHEN APPEALS MAY BE TAKEN DIRECTLY TO APPELLATE COURTS.

"Appeals shall be directly to the appropriate appellate court if:

1. An adequate record, or stipulation of facts is available and the right to a jury trial is waived by all parties entitled thereto; or

2. The parties stipulate that only questions of law are involved and the District Court certifies the questions. (Acts 1975, No. 1205, p. 2384, Section 4-111)."

STATEMENT OF THE CASE

By virtue of the issuance of Alabama Uniform Traffic Ticket and Complaint No. K 0053751, on July 4, 1987, Mack Aplin was charged with the offense: he "Did drive or be in actual physical control of a vehicle while: (4) there was .10% or more by weight of alcohol in his blood. BAC: .144. (4) Under the Influence of Alcohol." The same traffic ticket, after being filed with the District Court of Houston County, Alabama was denominated Case No. TR-87-4094. Mack Aplin entered a plea of not guilty and went

to trial before the Court, as this Court has no jury trial allowed by the Code of Alabama. On, to-wit: August 25, 1987, Mack Aplin was convicted of a second offense of Driving Under the Influence of Alcohol.

At the sentencing phase of said trial, the State, over proper objections by defense counsel, was allowed to admit a prior conviction of Mack Aplin for the offense of "D.U.I." The date of this said prior conviction was the 13th day of November, 1986. A true and correct copy of this said Judgment, and Order of the District Court of Houston County, Alabama in Case No. TR-86-6314, is attached hereto and made a part hereof, the same as if set out in full herein, and marked Exhibit "D", showing that the defendant appeared in open court, without counsel, and that he represented himself, pro se, by a checked block, and that a checked block states "waives

counsel."

Mack Aplin, in Case No. TR-87-4094 in the District Court of Houston County, Alabama, was punished as follows, to-wit: "A fine of $500.00, imprisonment of thirty (30) days, twenty-five (25) days suspended, and placed on probation for twelve (12) months, upon payment of fine and costs." A copy of this said Judgment of August 25, 1987 in Case No. TR-87-4094 is attached hereto and made a part hereof, the same as if set out in full herein, and marked Exhibits "E" and "F".

On the same date of August 25, 1987, Mack Aplin gave Notice of Appeal to the Court of Criminal Appeals of Alabama, upon an Agreed Stipulation of Facts and "Certified Question of Law", as provided for in Code of Alabama, 1975, Title 12-12-72(1)(2). See Exhibit "G" for said Certified Question of Law.

The Court of Criminal Appeals affirmed the Judgment of the District Court of Houston County, Alabama on, to-wit: May 11, 1988, without any decision. Appellant then filed an Application for Rehearing with the Court of Criminal Appeals of Alabama, within the time limits prescribed by said Rules, and submitted an additional Statement of Facts, and Questions of Law involved within the one certified question of law which had to be decided in order to make its opinion without a decision on the previous date aforesaid. The Court of Criminal Appeals then, again, affirmed the trial court, the District Court of Houston County, Alabama, without granting any requested additional facts by the appellant and questions of law involved within the one simplified statement of issues presented under the certified question of law to said appellate court on, to-wit: May 24, 1988, without any decision,

and only its opinion of affirmance.

Mack Aplin then filed his Petition for Writ of Certiorari with the Supreme Court of Alabama to be directed to the Court of Criminal Appeals of Alabama setting forth the questions of law included within the certified question of law presented to the Court of Criminal Appeals of Alabama, and as set forth in Mack Aplin's Application for Rehearing before the Court of Criminal Appeals of Alabama. The Supreme Court of Alabama rendered its opinion, without any decision, affirming the Judgment of the Court of Criminal Appeals of Alabama on, to-wit: August 19, 1988. Subsequent to said affirmance by the Supreme Court of Alabama, the District Clerk of the District Court of Houston County, Alabama, by virtue of the authority of the Circuit Clerk of Houston County, Alabama prepared its statement of costs and fines to be issued to the Sheriff

for execution upon Mack Aplin in this cause.

The appellant has filed on, to-wit: October 17, 1988, his Motion for a Stay of Levy of Execution by the Sheriff of Houston County, Alabama in order to try and avoid his imprisonment for fine and costs in said cause and a revocation of his probation pending a final hearing before this Honorable Court.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

At the sentencing hearing phase of said trial in the District Court of Houston County, Alabama, your petitioner made contemporaneous objections to the introduction of the prior judgment of conviction of Mack Aplin in the District Court of Houston County, Alabama, by pointing out that said Judgment failed to meet the requirements of law set out in Burgett v. Texas, 398 U.S. 109, 19 L.Ed.2d

319, 88 S. Ct. 258 (1967), Carnley v. Cochran, 369 U.S. 506, 8 L.Ed.2d 70, 82 S. Ct. 884; and Boykin v. Alabama, 395 U.S. 238 (1969), and, thereby, violated his right to Due Process of Law and a denial of Equal Protection of Law, by virtue of the fact that the said prior Judgment only contained conclusions of law; that said Judgment did not show a knowing, intelligent and understanding waiver of counsel on the said prior Judgment, on its face; and that it did not show compliance with Burgett v. Texas and Boykin v. Alabama in that only conclusions of law were stated on the face of said Judgment in that it did not show the that the trial court held the Boykin Colloquy as required by the aforesaid Boykin case. The trial court overruled petitioner's objections as to all grounds raised by proper objection thereto during the sentencing phase by the District Court

of Houston County, Alabama.

The only records of any and all criminal cases in the District Courts of Alabama are the State's complaint, affidavit and warrant, i.e., the Alabama Uniform Traffic Ticket and Complaint in this cause, plus any defensive pleadings filed by the defendant, and the Court's judgment.

From this Judgment of Conviction under Case No. TR-87-4094, upon the "Certified Question of Law" presented to the Court of Criminal Appeals of Alabama and the same being expanded on Application for Rehearing spelling out the numerous federal questions of law implicitly raised in the original one (1) Question of Law, and being denied, without decision, and the same being presented to the Supreme Court of Alabama by Petition for Writ of Certiorari, and the same being denied without a decision.

REASONS FOR GRANTING THE WRIT

This Court should grant Certiorari to consider whether the District Courts of Alabama, Criminal Divisions, deny this petitioner, and all other criminal defendants Equal Protection of Law and Due Process of Law under the case of Burgett v. Texas, Carnley v. Cochran and Boykin v. Alabama, by the failure of their records and judgments to include a viva voce colloquy required by Boykin v. Alabama, 395 U.S. 238 (1969), and Burgett v. Texas, 398 U.S. 109, 19 L.Ed.2d 319, 88 S. Ct. 258 (1967), and Carnley v. Cochran, 369 U.S. 506, 8 L.Ed.2d 70, 82 S. Ct. 884, as they only contain conclusions of facts pertaining to whether or not a defendant has counsel, or "waived counsel," and conclusions of facts that a "Boykin Colloquy" was carried out prior to the entering of a guilty plea, and which may be used to impose enhanced

punishment for subsequent offenses after the first offense, without any emanuensis, other than the trial judge.

The opinion of the Court of Criminal Appeals of Alabama, and of the Supreme Court of Alabama sanctioning the use of the said prior Judgments of the District Courts of Alabama, for enhancement purposes are, by no means an aberration, or exception among cases presented to them raising the sufficiency of the Constitutional requirements of these Judgments, and have repeatedly held said Courts' judgments to comply with the requirements of Burgett v. Texas, 398 U.S. 109, 19 L.Ed.2d 319, 88 S. Ct. 258 (1967), Carnley v. Cochran, 369 U.S. 506, 8 L.Ed.2d 70, 82 S. Ct. 884, and Boykin v. Alabama, 395 U.S. 238 (1969), even though they fail to show that Mack Aplin, or any other defendant who has waived counsel, did so knowingly, intentionally and

understandingly, and with full knowledge of the consequences thereof, even though there is no court record made of the same, due to the lack of a court reporter in said Court, as a court reporter can only be had by virtue of a defendant, whether indigent, or not, paying said court reporter in advance for his services. Said Judgments have also routinely been held to be good by the aforesaid appellate courts of Alabama concerning the lack of a "Boykin Colloquy", as shown by each of the Judgments, attached hereto as Exhibits "D" and "E", rendered in the District Court of Houston County, Alabama, by its simply using a printed form, that states conclusions of law to the effect that defendant has "waived counsel" and that Boykin v. Alabama has been complied with as there is no court reporter available without a defendant providing and paying for such reporter, in advance, to copy down any viva

voce colloquy between the trial court judge, and the defendant.

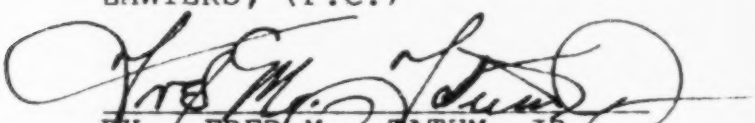
The fact that the appellate courts of Alabama have repeatedly ignored the case law of this Honorable Court should be cause for this Honorable Court not to tollerate such repeated and flagrant abuse and violations of its holdings in the cases of Burgett v. Texas, Carnley v. Cochran and Boykin v. Alabama, supra, and the further fact that only the wealthy criminal defendants can have the benefits of a court reporter in a Court of Record in Alabama.

CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, your petitioner prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

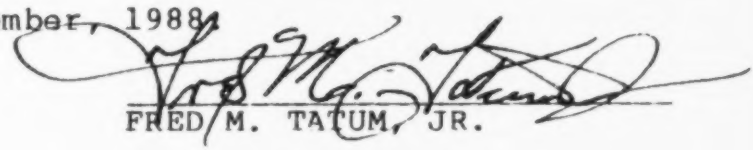
FRED M. TATUM & ASSOCIATES,
LAWYERS, (P.C.)



BY: FRED M. TATUM, JR.
119-121 North Oates Street
Dothan, Alabama 36303
Telephone: (205) 793-7335
ATTORNEY FOR PETITIONER,
MACK APLIN

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Petition for Writ of Certiorari has been served on the Honorable Don Siegelman, Attorney General for the State of Alabama, Office of the Attorney General, The Alabama State House, 11 South Union Street, Montgomery, Alabama 36130, by placing same in the U.S. Mail, postage prepaid and properly addressed, this 29th day of November, 1988.



FRED M. TATUM, JR.

E X H I B I T S

COURT OF CRIMINAL APPEALS

STATE OF ALABAMA

Post Office Box 351

MONTGOMERY 36101

William M. Bowen, Jr.
Presiding Judge
John C. Tyson, III
Sam Taylor
John Patterson
H. Ward McMillan
Judges

Mollie Jordan
Clerk
Ph. 261-4590

4TH DIV. 16

HOUSTON DISTRICT COURT
TR-87-4094

MACK APLIN
Appellant

vs.

STATE OF ALABAMA
Appellee

Dear Sir:

You are hereby notified that on April 26, 1988 the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

___ Notice of Appeal filed. Future correspondence should refer to the above number.

___ Record on Appeal filed. Date of Certificate of Completion of Record on Appeal: _____. As to briefs, see Rules 28, 31 and 32, A.R.A.P.

___ On motion, record on appeal accepted and considered as timely filed in this Court.

EXHIBIT "A"

___ Appellant granted seven (7) additional days to file brief. Brief due on _____.

___ Appellee granted seven (7) additional days to file brief. Brief due on _____.

___ Appellant granted seven (7) additional days to file reply brief. Brief due on _____.

___ Brief of Appellant filed. ____ Oral argument requested by appellant.

___ Reply brief filed.

___ Oral argument request disallowed; appeal submitted on briefs.

___ Appeal submitted to the Court for decision in the following manner:

XXX AFFIRMED on appeal. NO OPINION. Judgment not final, see Rules 40 and 41, A.R.A.P.

___ Appeal DISMISSED. NO OPINION.

___ Application for rehearing and Rule 39(k), A.R.A.P., motion filed.

___ Application for rehearing filed.

___ Application for rehearing OVERRULED. Rule 39(k), A.R.A.P., motion DENIED. NO OPINION. Judgment not final, see Rules 39 and 41, A.R.A.P.

___ Application for rehearing returned for non-compliance with Rule 40, A.R.A.P.

___ Appeal placed on rehearing ex mero motu.

___ Certificate of final judgment issued to Circuit Clerk.

___

/s/ Mollie Jordan
CLERK
COURT OF CRIMINAL
APPEALS OF ALABAMA

COURT OF CRIMINAL APPEALS

STATE OF ALABAMA

Post Office Box 351

MONTGOMERY 36101

William M. Bowen, Jr.
Presiding Judge
John C. Tyson, III
Sam Taylor
John Patterson
H. Ward McMillan
Judges

Mollie Jordan
Clerk
Ph. 261-4590

4TH DIV. 16

HOUSTON DISTRICT COURT
TR-87-4094

MACK APLIN
Appellant

vs.

STATE OF ALABAMA
Appellee

Dear Sir:

You are hereby notified that on May 24, 1988 the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

___ Notice of Appeal filed. Future correspondence should refer to the above number.

___ Record on Appeal filed. Date of Certificate of Completion of Record on Appeal: _____. As to briefs, see Rules 28, 31 and 32, A.R.A.P.

___ On motion, record on appeal accepted and considered as timely filed in this Court.

EXHIBIT "B"

___ Appellant granted seven (7) additional days to file brief. Brief due on _____.

___ Appellee granted seven (7) additional days to file brief. Brief due on _____.

___ Appellant granted seven (7) additional days to file reply brief. Brief due on _____.

___ Brief of Appellant filed. ____ Oral argument requested by appellant.

___ Reply brief filed.

___ Oral argument request disallowed; appeal submitted on briefs.

___ Appeal submitted to the Court for decision in the following manner:

___ AFFIRMED on appeal. NO OPINION. Judgment not final, see Rules 40 and 41, A.R.A.P.

___ Appeal DISMISSED. NO OPINION.

___ Application for rehearing and Rule 39(k), A.R.A.P., motion filed.

___ Application for rehearing filed.

XXX Application for rehearing OVERRULED. NO OPINION. Judgment not final, see Rules 39 and 41, A.R.A.P.

___ Application for rehearing OVERRULED. Rule 39(k), A.R.A.P., motion DENIED. NO OPINION. Judgment not final, see

Rules 39 and 41, A.R.A.P.

___ Application for rehearing returned for non-compliance with Rule 40, A.R.A.P.

___ Appeal placed on rehearing ex mero motu.

___ Certificate of final judgment issued to Circuit Clerk.

___

/s/ Mamie Jordan

CLERK
COURT OF CRIMINAL
APPEALS OF ALABAMA

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

August 19, 1988

87-1056

EX PARTE: Mack Aplin

PETITION FOR WRIT OF CERTIORARI

(Re: Mack Aplin v. State)

CCA 4/16

CERTIFICATE OF JUDGMENT
WRIT DENIED

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari be denied.

AMON, J. - TORBERT, CJ., MADDOX, BEATTY & HOUSTON, JJ., CONCUR.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

EXHIBIT "C"

Witness my hand this 19th day of August, 1988.

/s/ Robert G. Esdale
Clerk, Supreme Court of
Alabama

STATE OF ALABAMA
PLAINTIFF

VERSUS

MACK APLIN
DEFENDANT

IN THE DISTRICT COURT OF HOUSTON COUNTY, ALABAMA

TRAFFIC COURT DIVISION

CASE NO. TR-86-6314

DEFENDANT APPEARED IN OPEN COURT:

___ WITH COUNSEL, HON. _____

✓ PRO SE ✓ WAIVES COUNSEL

ORDER

✓ This matter coming on for judgment on said Defendant's plea of "guilty" to the charge of driving under the influence of alcohol or controlled substances, the court has conducted a colloquy with Defendant and has ascertained that he/she understands his/her right to plead "not guilty," to a presumption of innocence, to a court-appointed counsel, if indigent, that he/she knows the punishment which the court could impose (including conditions of probation), that he/she knowingly, voluntarily and intelligently waives counsel (if appearing pro se) and pleads "guilty," and that there is a factual basis for the Defendant's plea.

Defendant admits this is his/her / conviction.

___ This matter coming on for judgment on Defendant's plea of "not guilty" after considering all admissible evidence at

EXHIBIT "D"

trial.

It is therefore ORDERED, ADJUDGED AND DECREED that the said Defendant be and he/she is hereby found to be guilty as charged, and his/her punishment is fixed as follows:

✓ A FINE of $ 250 and costs of Court.
✓ IMPRISONMENT in the county jail for 60 days.
✓ Completion of D.U.I. School Course. Level I
___ Prohibited from driving on highways of this state for _____.

It is further ORDERED, ADJUDGED AND DECREED that 60 days of the sentence to imprisonment in the county jail will be suspended and the Defendant will be placed on probation for 24 months upon the Defendant's full compliance with the following conditions and special orders of this Court:

✓ Pay fine and costs (~~prior to release from jail~~). by 12/15/86 for payment.
✓ Submit to clerk of court a certificate of completion of D.U.I. School. Level II
___ Perform Community Service Work for _____.
✓ Attend AA 1/week for 12 months.
Provide proof of attendance.
___ Attend MOP School and provide certificate of completion.
✓ No contact with alcohol not prescribed for 24 months.
✓ Other Conduct himself in a reasonable and lawful manner for 2 years.

DONE this 13 day of November, 1986.

b/ McFatter
DISTRICT JUDGE, HOUSTON COUNTY

I Julia L. Trant, Clerk of the District Court, hereby certify that this is a true and correct copy of D.U.I. Conviction filed in this Court on Mack Aplin.

This the 17th day of October, 1988.

b/ Julia L. Trant
CLERK OF COURT

STATE OF ALABAMA
PLAINTIFF

IN THE DISTRICT COURT OF HOUSTON COUNTY, ALABAMA

VERSUS

TRAFFIC COURT DIVISION

MACK APLIN
DEFENDANT

CASE NO. TR-87-4094

DEFENDANT APPEARED IN OPEN COURT:

✓ WITH COUNSEL, HON. Fred Tatum

___ PRO SE ____ WAIVES COUNSEL

ORDER

___ This matter coming on for judgment on said Defendant's plea of "guilty" to the charge of driving under the influence of alcohol or controlled substances, the court has conducted a colloquy with Defendant and has ascertained that he/she understands his/her right to plead "not guilty," to a presumption of innocence, to a court-appointed counsel, if indigent, that he/she knows the punishment which the court could impose (including conditions of probation), that he/she knowingly, voluntarily and intelligently waives counsel (if appearing pro se) and pleads "guilty," and that there is a factual basis for the Defendant's plea.

Defendant admits this is his/her ____ conviction.

✓ This matter coming on for judgment on Defendant's plea of "not guilty" after considering all admissible evidence at

EXHIBIT "E"

trial.

It is therefore ORDERED, ADJUDGED AND DECREED that the said Defendant be and he/she is hereby found to be guilty as charged, and his/her punishment is fixed as follows:

✓ A FINE of $ 500 and costs of Court.
✓ IMPRISONMENT in the county jail for 30 days.
___ Completion of D.U.I. School Course Level II.
___ Prohibited from driving on highways of this state for _____.

It is further ORDERED, ADJUDGED AND DECREED that 35 days of the sentence to imprisonment in the county jail will be suspended and the Defendant will be placed on probation for 12 months upon the Defendant's full compliance with the following conditions and special orders of this Court:

✓ Pay fine and costs (prior to release from jail).
___ Submit to clerk of court a certificate of completion of D.U.I. School. Defendant in jail
___ Perform Community Service Work for _____.
___ Attend AA _____.
Provide proof of attendance.
___ Attend MOP School and provide certificate of completion.
___ No contact with alcohol not prescribed for _____.
___ Other _____
_____.

DONE this 25 day of August, 1987.

/s/ Danny Holloway
DISTRICT JUDGE, HOUSTON COUNTY

I Julia L. Trant, Clerk of the District Court, hereby certify that this is a true and correct copy of D.U.I. Conviction filed in this Court on Mack Aplin.

This the 17th day of October, 1988.

/s/ Julia L. Trant
CLERK OF COURT

State of Alabama
UJS
FORM UTC-5
Rev. 6/85

CASE NUMBER
CC-____-_____

SUPPLEMENTAL DISPOSITION
(TRAFFIC APPEAL)

NAME OF DEFENDANT: Mac Aplin

BIRTHDATE: 10/26/47

DRIVER'S LICENSE NUMBER: AL 2700724

COURT ORI NUMBER: AL 038023 J

UTC SERIES & NUMBER: K 0053751

TYPE TRIAL: ___ Jury ____ Non-Jury

LOWER COURT CASE NUMBER: TR-87-4094

ATTORNEY FOR DEFENDANT: FRED TATUM

FINDING OF THE COURT:
XXX Guilty as Charged ____ Not Guilty
___ Guilty of Lesser Charge of:_____
___ Nol Prossed
___ Case Dismissed
___ Municipal Appeal Dismissed

REFERENCE:
Section _____ Code of Alabama, 1975.
Municipal Ordinance
Number/Section _____.

COURT ORDERS:

Defendant ordered to pay $500.00 and Court Cost serve 30 days, which 25 of those are suspended. obtain a Certificate of Completion of DUI School. Defendant placed

on probation for 12 months.

FINE $ 500.00 + COURT COSTS $ 78.70 = TOTAL $ 578.70

X JAILED 30 Days in Houston County Jail (25 days suspended).

___ Court Referral Program

____ DUI ____ DDC

LOCATION _____ OR ID# _____

___ LICENSE SUSPENDED: _____ DAY(S)

_____ MONTH(S) _____ YEAR(S)

OTHER SENTENCE PROVISIONS:

8-22-88 Filed Certificate of Affirmance from Court of Criminal Appeals.

9/26/88 Copy put in Fred Tatum's Box.

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE RECORD OF THIS COURT.

/s/ Julia L. Trant
SIGNATURE - CLERK

DATE: 8/22/88

LICENSE ATTACHED: ___ YES ___ NO

DPS RECEIVED LICENSE: ___ YES ___ NO

ORIGINAL: TO DPS WITH UTC
PART 2: TO LOWER COURT

I, Julia L. Trant, Clerk of the District Court, hereby certify that this is a true and correct copy of DUI Conviction filed in this Court on Mack Aplin.

This the 17th day of October, 1988.

/s/ Julia L. Trant
CLERK OF COURT

CERTIFIED QUESTION OR ISSUE

"Does the prior conviction introduced into evidence by the State, to enhance punishment in a second offense D.U.I., comply with the legal requirements of Burgett v. Texas, 398 U.S. 109, 19 L.Ed.2d 319, 88 S. Ct. 258 (1967); Boykin v. Alabama, 395 U.S. 238 (1969); Baldasar v. Illinois, 446 U.S. 222 (1980); Ireland v. State, 257 So.2d 602, 47 Al. App. 65 (1971); Jarman v. State, 310 So.2d 481, 53 Al. App. 557 (1975)?"

EXHIBIT "G"